

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

12000.SMG.0008

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on _____

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Application Number

10/782,193

Filed

February 19, 2004

First Named Inventor

Hyo-Sun HWANG et al.

Art Unit

2476

Examiner

Mounir MOUTAOUAKIL

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

/Rachael Lea Leventhal/

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

Signature

Rachael Lea Leventhal

Typed or printed name

☒ attorney or agent of record.
Registration number 54,266

202-429-0020

Telephone number

☐ attorney or agent acting under 37 CFR 1.34.

July 16, 2010

Date

Registration number if acting under 37 CFR 1.34 _____

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below.

☒ *Total of 1 forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS: Hyo-Sun HWANG et al.

CONFIRMATION NO.: 4103

APPLICATION NO.: 10/782,193

GROUP ART UNIT: 2476

FILING DATE: February 19, 2004

EXAMINER: Mounir MOUTAOUAKIL

TITLE: Apparatus and method for transmitting packets in a communication system

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop: AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Advisory Action dated June 28, 2010, reconsideration and allowance of Applicants' claims are respectfully requested in view of Applicants' amendments and remarks provided below. Applicants respectfully request review of the rejections of the Final Office Action dated April 23, 2010, prior to appeal. Applicants make this request because the Final Office Action has failed to identify the omission or presence of essential elements required to establish a *prima facie* rejection. The Advisory Action indicated that the amendments made in the Amendment After Final filed June 17, 2010, would be entered for the purposes of appeal.

Failure to identify essential elements in rejection of claims 6, 9-11, 14-15, 20, and 24-27

Claims 6, 9-11, 14-15, 20, and 24-27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ketcham (US 6,721,334) in view of O'Mahony et al. (US 2004/0018016).

This rejection is respectfully traversed. Neither Ketcham nor O'Mahony et al., even when considered in combination, teaches or suggests all of the features of independent claims 6, 11, 20, or 26-27.

Claim 6 recites an apparatus for generating an aggregation packet in a communication system comprising, *inter alia*, “a buffer manager configured to store a plurality of data packets; and an aggregation module configured to receive the plurality of data packets from the buffer manager” (emphasis added). Claims 11, 20, and 26-27 recite similar features. Applicants respectfully submit that Ketcham and O'Mahony et al., even when combined, fail to teach or suggest at least these features.

To the contrary, Ketcham teaches only the routers 308 and 312 which receive individual packets and then perform the aggregation. There is no buffer that stores a plurality packets and a separate aggregation module that receives the plurality of packets. In fact, Ketcham teaches against using the separately claimed elements, as the routers 308 and 312 include a timeout function such that “[i]f the timer expires before any packets with a shared LLC destination are received, then the packet 118 is transmitted without being aggregated.” Col. 7, ln. 49-52. Applicants note that the Office Action asserts that the routers 308 and 312 are each both the buffer and the aggregation module, but there is no feedback such that the routers receive the packets from themselves. Applicants respectfully submit that Ketcham does not disclose, teach, or suggest at least a buffer manager that stores a plurality of data packets, and an aggregation module that receives the plurality of data packets from the buffer manager, as recited in claims 6, 11, 20, and 26-27. Nor is O'Mahony et al. cited for these features. Thus, O'Mahony et al. does not remedy the deficiencies of Ketcham.

Moreover, claim 6 further recites “aggregating at least two data packets comprising a same destination address and identical quality of service information” (emphasis added). Claims 11, 20, and 26-27 recite similar features. To the contrary, O’Mahony et al., which was cited for teaching that the data packets comprise identical quality of service information, actually teaches that “the input packets are aggregated based on destination and Quality of Service (QoS) parameters” and “optical packets with two destinations with two QoS classes.” ¶ [0040] (emphasis added). This change in terminology, from “parameters” to “classes” implies that there is a difference between the terms. ¶ [0038] of O’Mahony further teaches that the “LSRs 11 and the OPSs 10 handle the same granularity (per packet)” (emphasis added). This further bolsters the position that the classes of QoS may contain multiple different actual QoS values. Applicants respectfully submit that O’Mahony et al. does not disclose, teach, or suggest at least “aggregating at least two data packets comprising a same destination address and identical quality of service information,” as recited in claims 6, 11, 20, and 26-27. The Office Action admits at page 4 that Ketcham fails to teach these features. Thus, Ketcham does not remedy the deficiencies of O’Mahony et al.

Furthermore, Applicants respectfully submit that O’Mahony et al. is invalid to the extent that the figures, which are cited in the Office Action, are not fully described in or understandable from the specification. For example, there is no labeling or description of the various shading types in FIG. 3, and there are many reference characters (e.g., S1-S5, op1-op3, and OTN1-OTN2) which are not described in the specification in violation of 37 CFR 1.84(p)(5). “Reference characters not mentioned in the description shall not appear in the drawings.” *Id.*

Applicants further incorporate the arguments made in the response filed February 2, 2010. Applicants submit that the OTN of O'Mahony et al. only supports continuous data streams, and offers granularity only at the wavelength level. ¶ [0002]. Ketcham teaches against continuous data streams, for example, "packet 118 ... is being held for possible aggregation. ... Until the timer expires or the payload of the aggregate packet is full, additional packets can be put into the aggregate packet." Col. 7, ln. 45-49. In other words, Ketcham teaches holding packets for a predetermined period of time, which directly contradicts the continuous data streams of O'Mahony et al.

In the "Response to Arguments" section, the Office Action alleges that "the packets are aggregated based on destination and QoS parameters" of O'Mahony, which means that they have to be the "same destination and same QoS." However, Applicants respectfully submit that this allegation has no foundation. Specifically, the phrase "based on destination and QoS parameters" may have various meanings, such as that the corresponded parameters are same with a threshold value, that the corresponded parameters are within the determined scope, and that the corresponded parameters coincide with the previously determined standard. Accordingly, Applicants do not believe that the meaning of "same" is necessarily inferred by the phrase, "based on."

Since Ketcham and O'Mahony et al. are not properly combinable and do not teach or suggest all of the features of claims 6, 11, 20, and 26-27, claims 6, 11, 20, and 26-27 are not obvious over the cited combination. Claims 9-10, 14-15, and 24-25 depend, respectively, from independent claims 6, 11, and 20, and are patentable at least for the reasons mentioned above,

and on their own merits. Applicants respectfully request that the 35 U.S.C. § 103(a) rejection of claims 6, 9-11, 14-15, 20, and 24-27 be withdrawn and the claims allowed.

Failure to identify essential elements in rejection of claims 8, 13, and 23

Claims 8, 13, and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ketcham in view of O'Mahony et al., and further in view of alleged admitted prior art (AAPA). This rejection is respectfully traversed. Claims 8, 13, and 23 depend, respectively, from independent claims 6, 11, and 20, and are patentable at least for the reasons mentioned above, and on their own merits. Applicants respectfully request that the 35 U.S.C. § 103(a) rejection of claims 8, 13, and 23 be withdrawn and the claims allowed.

It is respectfully submitted that this application is in condition for allowance, and a notice to this effect is earnestly solicited. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided below.

Respectfully submitted,

Dated: July 16, 2010

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